

## Labor Management Relations Update (LMRU) Advisory **Union Dues Allotments and Agency Liability** (June 20, 2002)

**The Situation:** A bargaining unit employee who is having Union dues automatically deducted from their pay is promoted to a supervisory position or is reassigned to an unorganized work unit. Union dues continue to be withheld from their salary for two years, when the employee realizes that they are not covered by a collective bargaining agreement and can't receive Union representation. Upset with this new reality, the employee promptly requests the agency stop the allotment and submits a claim for reimbursement of dues that were withheld during the two-year period.

**The Question:** Is the employee entitled to reimbursement from the agency?

**The Answer:** Yes

**The Second Question:** Is the Union obligated to reimburse the Agency?

**The Second Answer:** Maybe

**The Explanation:** The Federal Service Labor Management Relation Statute (FSLMRS) at Section 7115(a) obligates agencies to honor written requests received from bargaining unit employees authorizing payroll deductions for regular and periodic union dues. The FSLMRS at Section 7115(b)(1), states that such allotments shall terminate when the written agreement between the agency and exclusive representative involved ceases to be applicable to the employee.

Current case law is established by the Office of Personnel Management's Office of Merit Systems Oversight and Effectiveness which exercises the Comptroller General authority to settle Federal employee compensation claims. Specifically, in Decisions S9801395 (7/22/99) and S9801017 (2/25/98), where employees were granted claims for dues erroneously taken OPM concluded:

Therefore, when bargaining unit members who have elected to pay membership dues to their exclusive representative through payroll deductions are promoted or transferred out of the bargaining unit, 5 U.S.C. Section 7115 no longer authorizes the deductions of union dues from their paychecks. Accordingly, such deductions must terminate as a matter of law. Deductions made contrary to this statute [FSLMRS] are erroneous and must be refunded to the employees.

The OPM decisions are consistent with those issued by the FLRA. See *AFGE Local 1963, and Department of Veterans Affairs Medical Center, Danville, Illinois*, 36 FLRA 25 (1990), where the Authority set aside an arbitrator's award requiring the VA to continue dues withholding while an employee was in a temporary supervisory position.

On the matter of whether the Union is obligated to reimburse the agency for dues it erroneously received via the agency from employees who were not in the bargaining unit, union liability is determined on a case-by-case basis. Again, turning to Comptroller General case law at Decision B-212695 (63 Comp. Gen. 351), it states:

We have held that where the union received erroneously withheld dues in good faith and without fraud or misrepresentation, the erroneous payment to the union may qualify for waiver under 5 U.S.C. Section 5584.

Thus, the agency in deciding whether it should seek reimbursement from the Union, should determine whether there is any evidence that the Union knew or should have known it was receiving dues to which it was not otherwise entitled. Absent such evidence, it may consider waiving the liability. Otherwise, collection efforts should be initiated.

In providing this information, the USDA recognizes that there are two Memorandums of Understanding between the National Federation of Federal Employees (NFFE) and the American Federation of Federal Employees (AFGE) containing dues processing procedures dating back to 1979. Neither contains language that specifically addresses the circumstances described in this Advisory regarding the discontinuance of due allotments and reimbursement liability. However, the USDA-NFFE Agreement at Item 11, infers that employees should not be reimbursed for erroneously collected dues and that NFFE was granted a blanket waiver from liability. Even if the MOU did apply to this situation, it is well established in Federal labor law that an agency's obligation to comply with law takes precedence over bi-lateral agreements between labor organizations and agencies. In this situation, agencies are bound to apply 5 U.S.C. 7115(b)(1). In addition, since USDA does not have a bargaining relationship with either Union at the Department level, there would be no bargaining obligation over procedures and appropriate arrangements for any changes necessary to come under compliance with law.

### **Lessons to be Learned and Recommendations Offered:**

1. *Prevention is the best remedy.* Agencies can avoid finding themselves in the situation of having to reimburse employees for illegal dues deductions by ensuring bargaining unit status codes (BUS) are changed in conjunction with personnel actions when employees leave the bargaining unit. For those BUS codes changed to 8888, NFC will automatically discontinue dues allotments – otherwise the allotments will continue. It is recommended that Labor Relations specialists orient the Classification and HR staff who process personnel actions on the importance of designating and checking BUS codes on AD-332s in conjunction with processing personnel actions.
2. *When errors are discovered, move quickly to discontinue automatic dues allotments.* HR staffs should discontinue illegal allotments to mitigate agency liability. Employees who are found to be ineligible for dues allotments, whether or not they want the allotments to continue, should have automatic dues allotments cancelled. HR staffs should inform the affected employees in

conjunction with making the change, and offer the employee the option to set up a financial allotment via payroll deductions to the Union in the same manner an employee may make allotments to other financial institutions. This would be a matter between the employee and Union, outside the scope of the FSLMRS and Departmental MOU with AFGE and NFFE.

3. *Periodically check BUS codes for employees with dues allotments.* Through your Focus report programmer (someone on the HR staff with Focus report generating skills) submit UNIONDUE report from the OP1 Library. The report will print the Name, BUS code, Union Code, Union Local, Title, Series, Grade, and Amount of Dues of employees. Given the LR specialist's knowledge of unit certifications, reviewing the report should reveal employees with improper dues withholdings. A sample copy of the UNIONDUE report (with the names deleted/modified for privacy reasons) is attached. In viewing the report, please recognize that it shows all employees with dues allotments, including those with dues going to professional associations.

Questions related to this Advisory, should be made to Pete Rockx, Program Manager for Labor Relations at USDA-OHRM, [peter.rockx@usda.gov](mailto:peter.rockx@usda.gov), 202-720-0065.

EMPLOYEES PAYING UNION DUES  
AS OF 06/20/02

AGENCY	NAME	BUS	LOCAL	AMOUNT	UNION CODE/ GRADE	SERIES/ TITLE
-----	----	---	-----	-----	-----	-----
Food and Nutrition Service	XXXXXX, DAVID	1162	52/2735	7.00	0301/11	PROG SPECLST
	XXXXXX, PHYLLIS	1162		18.95	0303/07	PROG TECHN CN OA
	XXXXXX, ARLENE	1162		18.95	0525/06	ACCTG TECHN CN
	XXXXXX, PETER	1162		7.00	0301/11	PROG SPECLST
	XXXXXX, ROD	1166	05/0503	2.00	0501/09	FNANCL MGMT SPEC
	XXXXXX, RUTH	1166	05/5199	2.00	0301/11	PROG SPECLST